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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

TOTAL PETROLEUM PUERTO RICO CORP.,

Defendant.

CIVIL ACTION NO.

COMPLAINT

Plaintiff UNITED STATES OF AMERICA, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), files this Complaint and alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and Section 9006(a)(1) of the Solid Waste Disposal Act, as amended and often referred to by the name of its principle statutory amendment, the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6991e(a)(1).

2. This Court has personal jurisdiction over the Defendant because the Defendant is a corporation licensed to do business in the Commonwealth of Puerto Rico (“Puerto Rico”), with its principal place of business in San Juan, Puerto Rico.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. §§ 1395 because the Defendant is located in this district and a substantial part of the events or omissions giving rise to this action occurred in this district.

NATURE OF ACTION

4. This is a civil action brought pursuant to Section 9006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (hereinafter referred to as the “Act” or “RCRA”), its implementing regulations set forth at 40 C.F.R. Part 280, and the Puerto Rico Underground Storage Tank Control Regulations (hereinafter “PRUSTR”) for civil penalties and injunctive relief against Defendant TOTAL PETROLEUM PUERTO RICO CORP., (hereinafter “Defendant” or “Total”).

5. Defendant has failed to satisfy one or more requirements of RCRA Subtitle I and the PRUSTR at thirty-five (35) automobile fueling facilities where Defendant owns the underground storage tanks (“USTs”). Thirty-one (31) facilities are located in the Commonwealth of Puerto Rico (“Puerto Rico”) and four facilities are located in the United States Virgin Islands (“Virgin Islands”). Defendant has failed to meet its legal obligation to (1) report suspected releases in Puerto Rico; (2) investigate suspected releases in Puerto Rico; (3) provide release detection for USTs in Puerto Rico; (4) provide release detection for pressurized piping in Puerto Rico and the U.S. Virgin Islands; (5) provide release detection for USTs in temporary closure in Puerto Rico; (6) maintain and provide release detection records in Puerto Rico and the U.S. Virgin Islands; (7) maintain and provide records of annual tests of automatic line leak detection (“ALLD”) equipment in Puerto Rico; (8) operate and maintain corrosion protection equipment in Puerto Rico; (9) provide properly calibrated overfill protection equipment in Puerto Rico; (10) secure USTs in temporary closure in Puerto Rico; and (11) secure vapor and/or groundwater monitoring wells in Puerto Rico. These are violations of RCRA and its implementing regulations.

DEFENDANT AND FACTUAL BACKGROUND

6. Defendant Total is a Puerto Rican limited liability company with its principal place of business in San Juan, Puerto Rico.

7. Total is duly registered with the Puerto Rico Department of State to do business in the Commonwealth of Puerto Rico, and its business is the sale of gasoline and other oil-derived products.

8. At all times relevant to this Complaint, Defendant owned USTs at 35 Total Petroleum gasoline fueling facilities located at the following addresses: a) Carr. 2, Km 30.6,

Vega Alta, PR (“Vega Alta Facility”); b) 263 Ave. Pineros, San Juan, PR (“San Juan / Ave. Pineros Facility”); c) Ave. E. Corde Hayde Rexach, Villa Palmeras, San Juan, PR (“San Juan / Ave. Rexach Facility”); d) Calle Jose de Diego, San Juan, PR (“San Juan / Calle Jose de Diego Facility”); e) 2811 Ave. Las Americas, Calle Fagot Esq., Ponce, PR (“Ponce / Ave. Las Americas Facility”); f) Carr. 2, Km 174.2, San German, PR (“San German / Carr. 2 Facility”); g) Carr. 125, Km. 6, Bo Cuba, Moca, PR (“Moca Facility”); h) Carr 357, Km. 3.9, Maricao, PR (“Maricao Facility”); i) Carr. 116, Km. 6.6 Lajas, PR (“Lajas Facility”); j) Carr. 132, Km. 26.2, Penuelas, PR (“Penuelas Facility”); k) Carr. 2, Km 215.4, Sabana Grande, PR (“Sabana Grande / Carr. 2 Facility”); l) Carr. 2, Km. 22.3, Bo. Pampana, Ponce, PR (“Ponce / Carr. 2, Km 22.3 Facility”); m) Carr. 152, Km 18.2, Naranjito, PR (“Naranjito Facility”); n) 101 Calle Luna, San German, PR (“San German / Calle Luna Facility”); o) Carr. 459, Km 3.0, Bo. Corrales, Aguadilla, PR (“Aguadilla / Carr. 459 Facility”); p) Carr. 100, Km 3.6, Cabo Rojo, PR (“Cabo Rojo Facility”); q) Carr. 112, Km 5.4 Bo. Arenales Altos, Isabela, PR (“Isabela Facility”); r) Carr. 102, Km 22.4, Sabana Grande, PR (“Sabana Grande / Carr. 102 Facility”); s) Carr. 2, Km 2.5, Ponce, PR (“Ponce / Carr. 2, Km 2.5 Facility”); t) Carr. 149, Km. 57.8, Villalba, PR (“Villalba Facility”); u) Carr. 2, Km 138.2, Naranjo, Aguada, PR (“Aguada Facility”); v) 123 Calle Comercio, Mayaguez, PR (“Mayaguez / Calle Comercio Facility”); w) Carr. 140, Km 65.5, Bo. Cruces Davila, Barceloneta, PR (“Barceloneta Facility”); x) Carr. 2, Km 157.4, Bo Sabalos, Mayaguez, PR (“Mayaguez / Carr. 2 Facility”); y) Ave. Nueva, Carr. 111, Km 0.7 Utuado, PR (“Utuado Facility”); z) Carr. 2, Km 121.5, Sector Victoria, Aguadilla, PR (“Aguadilla / Carr. 2 Facility”); aa) Carr. 149, Km 63.8, Bo Guayabal, Juana Diaz, PR (“Juana Diaz Facility”); bb) Carr. 135, Km 81, Adjuntas, PR (“Adjuntas Facility”); cc) Carr. 128, Km 2, Almacigo Bajo, Yauco, PR (“Yauco Facility”); dd) 973 Ave. Nita Nacaro, Urb. Mercedita, Ponce, PR (“Ponce /

Ave. Nita Nacaro Facility”); ee) Carr. 140, Km 65.2, Florida, PR (“Florida Facility”); ff) #384 and #391 Anna’s Retreat, St. Thomas, USVI (“St. Thomas / Anna’s Retreat Facility”); gg) #210-3A Altona, St Thomas, USVI (“St. Thomas / Altona Facility”); hh) #7 Charlotte Amalie, St. Thomas, USVI (“St. Thomas / Amalie Facility”); and ii) #17-A Estate Smith Bay (also #335 Long Bay Road), St. Thomas, USVI (“St. Thomas / Smith Bay Facility”).

9. In August and September 2008, EPA contractors and staff inspected thirty-four (34) of Total’s retail gasoline station facilities in Puerto Rico.

10. In August and September 2009, EPA contractors and staff inspected seventy-six (76) of Total’s retail gasoline station facilities in Puerto Rico.

11. On January 18, 2011, EPA Region 2 sent by certified mail an initial RCRA Section 9005 Information Request Letter (“IRL #1”) to Total to obtain further information on the compliance status of the facilities in Puerto Rico that are the subject of this Complaint as well as other facilities in Puerto Rico.

12. On March 7, 2011, and April 8, 2011, Total responded to IRL #1 and indicated that it was the owner/operator of the UST systems at the facilities identified in IRL #1.

13. On May 23, 2011, and June 22, 2011, Total submitted supplemental responses to IRL #1.

14. On September 14, 2011, EPA Region 2 sent by certified mail a second RCRA Section 9005 Information Request Letter (“IRL #2”) to Total to obtain additional information about the compliance status of the facilities in Puerto Rico that are the subject of this Complaint, among other facilities in Puerto Rico.

15. On November 3, 2011, Total responded to IRL #2, providing additional information about the compliance status of the facilities in Puerto Rico that are the subject of this Complaint.

16. On November 15 and 16, 2011, EPA contractors and staff inspected five (5) of Total's retail gasoline station facilities in the Virgin Islands.

17. On May 16, 2012, EPA Region 2 sent by certified mail a third RCRA Section 9005 Information Request Letter ("IRL #3") to Total to obtain information about the compliance status of the facilities in the Virgin Islands that are the subject of this Complaint, and one other facility in the Virgin Islands.

18. On July 27, 2012, Total responded to IRL #3, providing information about the compliance status of the facilities in the Virgin Islands that are the subject of this Complaint.

19. The inspections of Total's facilities and review of Total's IRL responses reveal that Total has failed to comply with certain provisions of the PRUSTR and 40 C.F.R. Part 280.

RCRA

20. RCRA established a comprehensive federal regulatory program for the management of hazardous wastes. 42 U.S.C. § 6901 *et seq.*

21. On November 8, 1984, as part of the Hazardous and Solid Waste Amendments of 1984 to RCRA, Congress created Subtitle I of RCRA, Regulation of Underground Storage Tanks. Subtitle I was created in response to a growing number of groundwater contamination incidents caused by substances leaking from USTs.

22. Section 9003(a) of RCRA, 42 U.S.C. § 6991b(a), directs the Administrator of EPA to "promulgate release detection, prevention, and correction regulations applicable to all

owners and operators of underground storage tanks, as may be necessary to protect human health and the environment.”

23. “Owner” is defined in Section 9001(4) of RCRA, 42 U.S.C. § 6991(4) as relevant to this Complaint, as “any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances.”

24. “Operator” is defined in Section 9001(3) of RCRA, 42 U.S.C. § 6991(3), as “any person in control of, or having responsibility for, the daily operation of the underground storage tank.”

25. The definition of “person,” pursuant to Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), includes, but is not limited to, an individual, a corporation and a partnership.

26. “Underground storage tank” or “UST” is defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), in part, as, “any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances.”

27. “Underground storage tank system” or “UST system” is defined in 40 C.F.R. Part 280, Subpart A, § 280.12 as an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

28. Pursuant to 40 C.F.R. § 280.12, any tank system used to contain an accumulation of regulated substance or for which installation has commenced on or before December 22, 1988 is an “existing tank system.” Any tank system that will be used to contain an accumulation of regulated substances and for which installation commenced after December 22, 1988 is a “new tank system.”

29. “Regulated substance” is defined in Section 9001(7)(B) of RCRA, 42 U.S.C. § 6991(7)(B), in part, as “petroleum.”

30. “Petroleum” is defined in Section 9001(6) of RCRA, 42 U.S.C. § 6991(6) as including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure.

31. Pursuant to 40 C.F.R. § 280.12, petroleum-based regulated substances include gasoline, kerosene and diesel fuels.

32. Section 9003(c)(1) of RCRA, 42 U.S.C. § 6991b(c)(1), requires EPA to promulgate “regulations applicable to owners and operators of USTs, including requirements for maintaining a release detection system, an inventory control system together with tank testing, or a comparable system or method to identify releases in a manner consistent with the protection of human health and the environment . . .”

33. Section 9003(c)(2) of RCRA, 42 U.S.C. § 6991b(c)(2), requires EPA to promulgate regulations applicable to owners and operators of USTs, including “requirements for maintaining records of any monitoring or release detection system or inventory control system or tank testing or comparable system.”

34. Section 9005(a) of RCRA, 42 U.S.C. § 6991d(a), requires any owner or operator of a UST to furnish to EPA information relating to such tanks, their associated equipment and contents, and to conduct monitoring and testing.

APPLICABLE REGULATIONS

35. Pursuant to Section 9003(a) of RCRA, 42 U.S.C. § 6991b(a), the Administrator of EPA promulgated regulations regarding the operation and maintenance of

USTs, codified at 40 C.F.R. Parts 280 and 281, that, pursuant to 40 C.F.R. § 280.10(a), apply to all owners and operators of USTs.

A. Applicable UST Regulations in the United States Virgin Islands

36. 40 C.F.R. §§ 280.40-280.45 requires owners and operators of new and existing USTs, *inter alia*, to provide a method, or combination of methods, of release detection for USTs and underground piping that: (a) meets enumerated performance standards; (b) detects releases from any portion of the tank and connected underground piping; and (c) is operated, maintained and tested in accordance with relevant provisions and within specified frequencies.

37. 40 C.F.R. § 280.41(b)(1)(ii) requires that owners and operators provide for underground pressurized piping that conveys regulated substances, either an annual line tightness tests conducted in accordance with § 280.44(b), or have monthly monitoring conducted in accordance with § 280.44(c).

38. The regulations that require record keeping are codified at 40 C.F.R. § 280.34 and § 280.45. These regulations require owners and operators of USTs to maintain records demonstrating compliance with all release detection regulations, including but not limited to the results of sampling, testing, monitoring and repairs. The regulations further require that any required records be retained on site or at a readily available alternative location for at least one year.

B. Applicable UST Regulations in Puerto Rico

39. Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, a state may submit a program of underground storage tank regulations to EPA. If EPA approves the state's program, the state may administer and enforce its own regulations in lieu of federal regulations. 42 U.S.C. § 6991c(d)(2).

40. Pursuant to Puerto Rico's Public Policy Environmental Act (Law No. 9 of June 18, 1970), Puerto Rico's Environmental Quality Board promulgated the Commonwealth of Puerto Rico Underground Storage Tank Control Regulations (hereinafter "PRUSTR") in 1990. P.R. Admin. Regulation 4362.

41. EPA approved PRUSTR in 1998. *See* 64 Fed. Reg. 4593 (Jan. 30, 1998); 40 C.F.R. § 280.102 (codifying EPA approval). Therefore, the Commonwealth of Puerto Rico Environmental Quality Board is the "implementing agency" responsible for enforcing PRUSTR within Puerto Rico. 40 C.F.R. § 282.102. Furthermore, the Commonwealth is authorized to enforce PRUSTR in lieu of the federal RCRA Subchapter IX regulations. *Id.*

42. When EPA recognized PRUSTR as an approved state underground storage tank program, EPA retained enforcement authority:

The Commonwealth of Puerto Rico has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its corrective action, inspection and enforcement authorities under sections 9003(h)(1), 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. § 6991b(g)(1), 6991d and 6991e, as well as its authority under other statutory and regulatory provisions. 40 C.F.R. §282.102(b).

43. Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2), requires EPA to notify the Commonwealth of Puerto Rico that it intends to exercise its enforcement authority. EPA issued such notice to Puerto Rico on June 12, 2012.

44. The terms "underground storage tank," "UST system," "regulated substance," "operator," "owner," and "person" are defined in PRUSTR Rule 105 in a manner consistent with the statutory definitions.

45. If the owner of an UST system receives notice of released regulated substances at the UST facility or in the surrounding area, such as indicated by the presence of vapors in soils, or if monitoring results indicate a release may have occurred, the owner must report to the

Puerto Rico Environmental Quality Board (“EQB”) within 24 hours that a suspected release has occurred. PRUSTR Rule 501(A), (C).

46. Within seven days, the owner must investigate and confirm a suspected release that was required to be reported to EQB under Rule 501. PRUSTR Rule 503.

47. The Rule 503 investigation must proceed according to the procedures listed in PRUSTR Rule 503(A) and (B) or according to another procedure approved by EQB. PRUSTR Rule 503.

48. Owners must provide release detection for tanks, testing for releases at least every thirty (30) days using one of the methods listed in PRUSTR Rule 404(D) through (H) for releases of regulated substances, except in certain situations which are inapplicable to this Complaint. PRUSTR Rule 402(A). If an owner uses groundwater monitoring as the method of release detection, the groundwater must be less than twenty feet from the ground surface for this method to be permissible. PRUSTR Rule 404(F)(2).

49. Owners of underground storage tank systems must provide release detection for pressurized piping by equipping such piping with an automatic line leak detector (“ALLD”) and conducting line tightness testing. PRUSTR Rule 402(B)(1).

50. Owners of underground storage tank systems must test automatic line leak detectors annually in accordance with the manufacturer’s requirements. PRUSTR Rule 405(A).

51. Owners of underground storage tanks must maintain records demonstrating compliance with the release detection requirements, in part by retaining the results of sampling, testing, or monitoring for one year or for another reasonable period determined by the Board except that the results of tank tightness testing conducted in accordance with Rule 404(C) must be retained until the next test is conducted. PRUSTR Rule 406.

52. Owners of underground storage tank systems must operate and maintain corrosion protection systems to continuously provide corrosion protection to the metal components of the tank and piping that routinely contain regulated substances and are in contact with the ground. PRUSTR Rule 302(A).

53. Owners of underground storage tank systems must install overfill prevention equipment that either: (a) shuts off flow into the tank when the tank is 95% full; (b) restricts the flow or triggers an alarm when the tank is no more than 90% full; or, (c) restricts flow 30 minutes prior to overfilling, triggers an alarm one minute before overfilling, or automatically shuts off flow into the tank so that none of the fittings located on top of the tank are exposed to product. PRUSTR Rule 201(C), (D).

54. Owners of underground storage tank systems whose system is temporarily closed for three months or more must cap and secure all lines, pumps, manways, and ancillary equipment, except for vent lines which must remain open. PRUSTR Rule 701(B).

55. An UST system is in permanent closure only if the tank(s) have been removed from the ground or filled with an inert solid material. PRUSTR Rule 702(B).

56. Owners of underground storage tank systems who use groundwater or vapor monitoring as a method of release detection must secure monitoring wells to avoid unauthorized access and tampering. PRUSTR Rule 404(E)(7).

C. Applicable Enforcement Provisions

57. Section 9006 of RCRA, 42 U.S.C. § 6991e, authorizes the Administrator of EPA to commence a civil action for appropriate relief, including a temporary or permanent injunction, when the Administrator determines that any person is in violation of any requirement of Subchapter IX (Regulation of Underground Storage Tanks).

58. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2641 note: Pub. L. 101-410, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvements Act of 1996 (31 U.S.C. § 3701 note: Pub. L. 101-134, enacted April 26, 1996, 110 Stat. 1321), EPA promulgated the Civil Monetary Penalty Inflation Adjustment Rule. Under that rule, EPA may seek civil penalties of up to \$11,000 per tank per day for each violation occurring after March 15, 2004, and \$16,000 per tank per day for each violation occurring after January 12, 2009. *See* 61 Fed. Reg. 69,364 (Dec. 31, 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004); 73 Fed. Reg. 73,345 (Dec. 11, 2008); 78 Fed. Reg. 66,643 (Nov. 6, 2013).

GENERAL ALLEGATIONS

59. At all times relevant herein, the Defendant has owned underground storage tanks at the facilities listed in Paragraph 8, as defined by 42 U.S.C § 6991 and Rule 105 of PRUSTR.

60. Defendant is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and PRUSTR Rule 105.

61. At all times relevant to the violations alleged herein, Defendant was subject to the requirements of Subchapter IX of RCRA, 42 U.S.C. § 6991 *et seq.*, and its implementing regulations in the PRUSTR, including the applicable performance standards, monitoring, testing, and recordkeeping requirements set forth therein, to ensure that Defendant’s USTs were properly maintained and monitored to prevent releases of regulated substances into the environment.

62. Pursuant to Sections 9006(a) and (d) of RCRA, 42 U.S.C. §§ 6991e (a) and (d), Defendant is subject to injunctive relief and is liable for civil penalties based upon the claims for relief identified below.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Failure to Investigate Suspected Releases
PRUSTR Rule 503

63. Paragraphs 1 through 62 are realleged and incorporated by reference, as if fully set forth herein.

64. Rule 503 of PRUSTR requires Defendant to investigate all suspected releases of regulated substances requiring reporting under Rule 501 within seven days, by conducting the system test and site check procedures described in PRUSTR Rule 503, or another procedure approved by EQB.

65. In IRL #1, EPA requested that Total PR provide all results of release detection monitoring for the year prior to its receipt of IRL #1 as well as all results of release detection monitoring that were required to have been available at the time of the EPA inspections of each facility.

66. In response to IRL #1, Total PR indicated that the method of release detection is vapor/groundwater monitoring at the San Juan / Ave. Rexach, Ponce / Ave. Las Americas, San German/Carr. 2, Aguadilla / Carr. 459, and Ponce / Carr. 2, Km 2.5 Facilities.

67. Monthly vapor monitoring indicated the presence of petroleum vapors in the soil at the San Juan / Ave. Rexach Facility on 2/16/10, 3/29/10, 4/28/10, 5/31/10, 6/23/10, 7/23/10, 8/19/10, 9/27/10, 10/25/10, 11/18/10, 12/20/10, 1/25/11, 2/18/11, 3/23/11, 4/19/11, 5/24/11, 6/28/11, 7/27/11, 8/25/11, and 9/15/11.

68. Monthly vapor monitoring indicated the presence of petroleum vapors in the soil at the Ponce / Ave. Las Americas Facility on 1/8/09, 2/2/09, 3/3/09, 4/9/09, 5/1/09, 6/3/09, 7/3/09, 8/3/09, 9/1/09, 10/1/09, 11/6/09, 12/1/09, 1/18/10, 2/1/10, 3/15/10, 4/9/10, 5/5/10, 6/4/10,

7/1/10, 8/2/10, 9/10/10, 10/4/10, 11/1/10, 12/2/10, 1/3/11, 2/2/11, 3/1/11, 4/4/11, 5/5/11, 6/2/11, 7/1/11, 8/15/11, and 9/8/11.

69. Monthly vapor monitoring indicated the presence of petroleum vapors in the soil at the San German / Carr. 2 Facility on 1/11/10, 2/1/10, 3/15/10, 4/9/10, 5/5/10, 6/4/10, 8/3/10, 9/7/10, 10/5/10, 11/1/10, 12/3/10, 1/4/11, 2/3/11, 3/1/11, 4/4/11, 5/10/11, 6/2/11, 7/5/11, and 8/1/11.

70. Monthly vapor monitoring indicated the presence of petroleum vapors in the soil at the Aguadilla / Carr. 459 Facility on 8/9/07, 9/6/07, 10/16/07, 12/20/07, 1/15/08, 2/6/08, 3/11/08, 4/11/08, 6/13/08, 1/12/09, 2/3/09, 5/11/09, 6/26/09, 7/23/09, 8/19/09, 9/2/09, and 12/2/09.

71. One monthly vapor monitoring test indicated the presence of petroleum vapors in the soil at the Ponce / Carr. 2, Km 2.5 Facility on 4/9/10.

72. The vapor monitoring results indicating the presence of petroleum vapors described in Paragraphs 67 through 71 constitute suspected releases requiring reporting under PRUSTR Rule 501.

73. Defendant was required to investigate the suspected releases described in Paragraphs 67 through 71 within seven days by conducting the system test and site check procedures described in PRUSTR Rule 503, or another procedure approved by EQB.

74. EQB has not approved any alternative procedure for compliance with PRUSTR Rule 503 in connection with the suspected releases described in Paragraphs 67 through 71.

75. In IRL #1, EPA requested that Defendant describe the steps it had taken in investigating any suspected releases according to the procedures listed in Rule 503.

76. In response to IRL #1, Defendant did not demonstrate that it had taken the required investigative steps described in Rule 503 within seven days of receiving the positive vapor monitoring results. Defendant failed to take the investigative steps required by Rule 503 of PRUSTR.

77. For its violations of Rule 503, Defendant is subject to injunctive relief and civil penalties at the daily rate set forth in Paragraph 58.

SECOND CLAIM FOR RELIEF

Failure to Report Suspected Releases
PRUSTR Rule 501(A)

78. Paragraphs 1 through 77 are realleged and incorporated by reference, as if fully set forth herein.

79. Rule 501(A) of PRUSTR requires Defendant to report to EQB within 24 hours a discovery of released regulated substances at the UST facility or in the surrounding area, such as indicated by the presence of vapors in soils.

80. Defendant was required to report a suspected release to EQB within 24 hours of receiving the monitoring result indicating the presence of petroleum vapors described above in Paragraph 71.

81. In IRL #1, EPA asked if the Defendant had reported the suspected release to EQB.

82. Defendant did not provide in its response to IRL #1 any documents indicating that it had reported the suspected release described above in Paragraph 71. Defendant failed to report the suspected release under Rule 501 of PRUSTR.

83. For its violation of Rule 501, Defendant is subject to injunctive relief and civil penalties at the daily rate set forth in Paragraph 58.

THIRD CLAIM FOR RELIEF

Failure to Provide Release Detection for USTs
PRUSTR Rule 402(A)

84. Paragraphs 1 through 83 are realleged and incorporated by reference, as if fully set forth herein.

85. Rule 402(A) of PRUSTR requires Defendant to provide release detection for tanks by monitoring for releases at least every thirty days using one of the methods listed in Rule 404(D) – (H).

86. Acceptable methods of release detection pursuant to Rule 404(D) and (G) include interstitial or product level monitoring conducted by an automatic tank gauging system.

87. In IRL #1, EPA requested that Defendant specify the method of release detection for USTs for all facilities relevant to this Complaint, and provide the results of release detection monitoring for the twelve months prior to January 21, 2011, as well as any release detection monitoring results that Defendant was required to have available at the time EPA inspected its facilities.

88. In IRL #2, EPA requested that Defendant provide the copies of monitoring test results for the twelve months prior to September 19, 2011, at the Vega Alta Facility, and for calendar year 2011 at the Mayaguez / Carr. 2 Facility.

89. In its IRL responses, Defendant indicated that the method of release detection for tanks is automatic tank gauging at the Vega Alta, San Juan / Calle Jose de Diego, Barceloneta, Mayaguez / Carr. 2, Aguadilla / Carr. 2, Juana Diaz, and Ponce / Ave. Nita Nacaro Facilities, among other facilities. To the extent that Defendant provided the requested release detection monitoring results, the results were compiled in monthly reports.

90. Defendant's automatic tank gauging reports did not provide monthly monitoring results for two USTs at the Vega Alta Facility between May 25, 2011, and October 11, 2011. The October 2011 monthly report provided the most recent monitoring results for the Vega Alta Facility.

91. Defendant was in violation of Rule 402 from June 25, 2011, through at least October 11, 2011, with respect to two USTs at the Vega Alta Facility.

92. Defendant's automatic tank gauging reports did not provide monthly monitoring results for four gasoline USTs at the San Juan / Calle Jose Diego Facility between September 1, 2009, and July 30, 2010.

93. Defendant was in violation of Rule 402 from October 1, 2009, to July 30, 2010 with respect to four USTs at the San Juan / Calle Jose Diego Facility.

94. Defendant's automatic tank gauging reports did not provide monthly monitoring results for two USTs at the Barceloneta Facility between April 21, 2010, and August 30, 2010.

95. Defendant was in violation of Rule 402 from May 21, 2010, to August 30, 2010 with respect to two USTs at the Barceloneta Facility.

96. Defendant's automatic tank gauging reports did not provide monthly monitoring results for one UST at the Mayaguez / Carr. 2 Facility between March 17, 2009, and May 10, 2010.

97. Defendant was in violation of Rule 402 from April 17, 2009, to May 10, 2010 with respect to one UST at the Mayaguez / Carr. 2 Facility.

98. Defendant's automatic tank gauging reports did not provide monthly monitoring results for three USTs at the Aguadilla / Carr. 2 Facility from November 5, 2009,

through December 31, 2010. The December 2010 monthly report provided the most recent monitoring results for this Facility.

99. Defendant was in violation of Rule 402 from December 5, 2010, to at least January 20, 2011, with respect to three USTs at the Aguadilla / Carr. 2 Facility.

100. Defendant's automatic tank gauging reports did not provide monthly monitoring results for one UST at the Juana Diaz Facility between May 5, 2009, and February 27, 2010.

101. Defendant was in violation of Rule 402 from June 5, 2009 to February 27, 2010, with respect to one UST at the Juana Diaz Facility.

102. Defendant's automatic tank gauging reports did not provide monthly monitoring results for two USTs at the Ponce / Ave. Nita Nacaro Facility from April 27, 2010, through December 31, 2010. December 2010 was the most recent report provided.

103. Defendant was in violation of Rule 402 from May 27, 2010, to at least January 20, 2011, with respect to two USTs at the Ponce / Ave. Nita Nacaro Facility.

104. In its IRL responses, Defendant indicated that vapor/groundwater monitoring is the method of release detection for its two USTs at the Ponce / Carr. 2, Km 2.5 Facility.

105. A requirement of groundwater monitoring as a method of release detection is that the groundwater must be less than twenty feet from the ground surface. PRUSTR Rule 404(F)(2).

106. Defendant's groundwater/vapor monitoring results for the Ponce / Carr. 2, Km. 2.5 Facility indicated that groundwater monitoring, and not vapor monitoring, was conducted from January 8, 2009, through July 1, 2010, except for the month of April 2009, when vapor monitoring was conducted in addition to the groundwater monitoring.

107. From January 8, 2009, to July 1, 2010, the groundwater was more than twenty feet below the ground surface.

108. Defendant was in violation of Rule 402(A) from January 8, 2009, to April 8, 2010; and from May 10, 2010, to July 1, 2010, with respect to two USTs at its Ponce / Carr. 2, Km 2.5 Facility.

109. For its violations of Rule 402(A), Defendant is subject to injunctive relief and civil penalties at the daily rate set forth in Paragraph 58.

FOURTH CLAIM FOR RELIEF

Failure to Provide Release Detection for Pressurized Piping By Failing to Conduct Annual Line Tightness Testing or Conduct Monthly Monitoring PRUSTR Rule 402(B); 40 C.F.R. § 280.41(b)(1)(ii)

110. Paragraphs 1 through 109 are realleged and incorporated by reference, as if fully set forth herein.

111. Pursuant to Rule 402(B)(1)(b) of PRUSTR, Defendant is required to provide release detection for its pressurized piping either by conducting annual line tightness testing in accordance with Rule 405(B) of PRUSTR or conducting monthly monitoring in accordance with Rule 405(C) of PRUSTR.

112. In IRL#1, EPA requested that Defendant provide records of monthly monitoring or annual line tightness testing for the pressurized fuel pipes at the Villalba, Barceloneta, Utuado, Aguadilla / Carr. 2, and Ponce / Ave. Nita Nacaro Facilities for the twelve months prior to January 21, 2011 as well as the records that were required to be available at the time of EPA's inspection(s).

113. In response to IRL #1, Defendant indicated that all piping associated with the USTs was pressurized at the Villalba, Barceloneta, Utuado, Aguadilla / Carr. 2, and Ponce / Ave. Nita Nacaro Facilities.

114. In response to IRL #1, Defendant indicated that the method of release detection for its pressurized piping was annual line tightness testing via an automatic tank gauging system at the Villalba, Barceloneta, Utuado, Aguadilla / Carr. 2, and Ponce / Ave. Nita Nacaro Facilities.

115. Defendant's automatic tank gauging reports for the Villalba Facility did not provide line tightness test results for the piping associated with the regular gasoline UST from December 18, 2009, through December 31, 2010. December 2010 was the most recent report provided.

116. Defendant was in violation of Rule 402(B)(1)(b) from December 18, 2010, to at least January 20, 2011, with respect to the piping associated with the regular gasoline UST at the Villalba Facility.

117. Defendant's automatic tank gauging reports for the Barceloneta Facility did not provide line tightness test results for the premium gasoline UST from September 17, 2009, through December 31, 2010. December 2010 was the most recent report provided.

118. Defendant was in violation of Rule 402(B)(1)(b) from September 17, 2010, to at least January 20, 2011, with respect to the piping associated with one UST at the Barceloneta Facility.

119. Defendant's automatic tank gauging reports for the Utuado Facility did not provide line tightness test results for the pressurized piping associated with the regular gas UST between December 31, 2008, and April 20, 2010.

120. Defendant was in violation of Rule 402(B)(1)(b) from at least December 31, 2009, to April 20, 2010, with respect to the pressurized piping associated with one UST at the Utuado Facility.

121. Defendant's automatic tank gauging reports for the Aguadilla / Carr. 2 Facility did not provide line tightness test results for the the piping associated with the regular UST from June 15, 2009, through December 31, 2010, and did not provide line tightness test results for the piping associated with the diesel and premium USTs from May 26, 2009, through December 31, 2010. December 2010 was the most recent report provided.

122. Defendant was in violation of Rule 402(B)(1)(b) from June 15, 2010, to at least January 20, 2011, with respect to the piping associated with one UST, and from May 26, 2010, to at least January 20, 2011, with respect to the piping associated with two USTs at the Aguadilla / Carr. 2 Facility.

123. Defendant's automatic tank gauging reports for the Ponce / Ave. Nita Nacaro Facility did not provide line tightness test results for the piping associated with the premium UST from August 26, 2009, through December 31, 2010. December 2010 was the most recent report provided.

124. Defendant was in violation of Rule 402(B)(1)(b) from August 26, 2010, to at least January 20, 2011, with respect to the piping associated with one UST at the Ponce / Ave. Nita Nacaro Facility.

125. Pursuant 40 C.F.R. § 280.41(b)(1)(ii), Defendant is required to provide release detection for its pressurized piping either by conducting annual line tightness testing in accordance with 40 C.F.R. § 280.44(b), or conducting monthly monitoring in accordance with 40 C.F.R. § 280.44(c).

126. In IRL#3, EPA requested that Defendant identify the release detection methods in place at each facility in the U.S. Virgin Islands, and provide records of all monthly monitoring results for the pressurized fuel pipes at the St. Thomas / Anna's Retreat, St. Thomas / Altona, and St. Thomas / Amalie Facilities for the twelve months prior to May 2012.

127. Based on EPA's inspection findings and/or Defendant's responses to IRL #3, all piping associated with the USTs was pressurized at St. Thomas / Anna's Retreat, St. Thomas / Altona, and St. Thomas / Amalie Facilities.

128. In response to IRL #3, Defendant indicated that the primary method of release detection for its pressurized piping was monthly monitoring via an automatic tank gauging system at the St. Thomas / Anna's Retreat, St. Thomas / Altona, and St. Thomas / Amalie Facilities.

129. In response to IRL #3, Defendant indicated that it also performed statistical inventory reconciliation ("SIR") as another method of release detection for its pressurized piping at the St. Thomas / Anna's Retreat, St. Thomas / Altona, and St. Thomas / Amalie Facilities.

130. Defendant's automatic tank gauging reports for the St. Thomas / Anna's Retreat Facility did not provide monthly monitoring results from May 2011 through February 2012 for the piping associated with three USTs. Defendant also did not provide SIR records, or provided inadequate SIR records, for this period.

131. Defendant was in violation of 40 C.F.R. § 280.41(b)(1)(ii) from May 2011 through February 2012 with respect to the piping associated with three USTs at the St. Thomas / Anna's Retreat Facility.

132. Defendant's automatic tank gauging reports for the St. Thomas / Altona Facility did not provide monthly monitoring results from May 2011 through December 2011 for

the piping associated with two USTs. Defendant also did not provide SIR records, or provided inadequate SIR records, for this period.

133. Defendant was in violation of 40 C.F.R. § 280.41(b)(1)(ii) from May 2011 through December 2011 with respect to the piping associated with two USTs at the St. Thomas / Altona Facility.

134. Defendant's automatic tank gauging reports for the St. Thomas / Amalie Facility did not provide monthly monitoring results from May 2011 through September 2011 for the piping associated with two USTs. Defendant also did not provide SIR records, or provided inadequate SIR records, for this period.

135. Defendant was in violation of 40 C.F.R. § 280.41(b)(1)(ii) from May 2011 through September 2011 with respect to the piping associated with two USTs at the St. Thomas / Amalie Facility.

136. For its violations of Rule 402(B)(1)(b) and 40 C.F.R. § 280.41(b)(1)(ii), Defendant is subject to injunctive relief and civil penalties at the daily rate set forth in Paragraph 58.

FIFTH CLAIM FOR RELIEF

Failure to Provide Release Detection for USTs Containing More than One Inch of Product While In Temporary Closure PRUSTR Rule 701(a)

137. Paragraphs 1 through 136 are realleged and incorporated by reference, as if fully set forth herein.

138. Pursuant to Rule 701(a) of PRUSTR, when an UST system is temporarily closed, and as long as the UST system contains more than one inch of product, owners must continue release detection in accordance with Part IV of PRUSTR.

139. Part IV of PRUSTR, as relevant to this claim, requires, and required at the time of the violations, that Defendant provide release detection for tanks by monitoring for releases at least once every thirty days using one of the methods permitted by Rule 404.

140. An EPA inspection of the Florida Facility on September 25, 2009, found that the facility was temporarily closed and all three USTs contained five or more inches of product.

141. In IRL#1, EPA requested that Defendant indicate the method of release detection used at the Florida Facility, and provide the monthly release detection monitoring reports for the twelve months prior to January 21, 2011.

142. In response to IRL #1, Defendant stated that automatic tank gauging was the method of release detection used at the Florida Facility.

143. Defendant's automatic tank gauging reports did not provide monthly monitoring results from May 5, 2009, through November 20, 2009, for the three USTs at the Florida Facility.

144. Defendant sold the Florida Facility on November 20, 2009.

145. Defendant was in violation of Rule 701(a) with respect to three USTs at the Florida Facility from June 4, 2009, to November 19, 2009.

146. For its violations of Rule 701(a), Defendant is subject to injunctive relief and civil penalties at the daily rate set out in Paragraph 58.

SIXTH CLAIM FOR RELIEF

Failure to Maintain and Provide Records of Compliance with Release Detection Requirements For USTs PRUSTR Rules 305 and 406; 40 C.F.R. §§ 280.34 and 280.45

147. Paragraphs 1 through 146 are realleged and incorporated by reference, as if fully set forth herein.

148. Pursuant to Rules 305(B)(4), 305(C) and 406 of PRUSTR, Defendant is required to maintain records demonstrating recent compliance with release detection requirements for at least one year, and must keep the records at the facility or provide the records for inspection upon request.

149. During the September 23, 2009, inspection of the Aguada Facility, the EPA inspector noted that monthly monitoring via automatic tank gauging was the method of release detection.

150. In IRL #1, EPA requested that Defendant provide monthly monitoring records from its automatic tank gauging system at the Aguada Facility for the twelve months prior to January 21, 2011.

151. In response to IRL #1, Defendant stated that automatic tank gauging was the method of release detection used at the Aguada Facility.

152. Defendant failed to provide any monthly monitoring records from its automatic tank gauging system, or records of any other method of release detection, for the three USTs at the Aguada Facility.

153. Defendant was in violation of Rules 305(B)(4) & (C) and 406 of PRUSTR with respect to three USTs at the Aguada Facility from January 20, 2010, to January 20, 2011.

154. An EPA inspection of the Mayaguez / Calle Comercio Facility on September 22, 2009 found that the facility was temporarily closed and the regular gasoline UST contained six inches of product.

155. In IRL#1, EPA requested that Defendant indicate the method of release detection used at the Mayaguez / Calle Comercio Facility, and provide the monthly release detection monitoring reports for the twelve months prior to January 21, 2011.

156. In response to IRL #1, Defendant stated that automatic tank gauging was the method of release detection used at the Mayaguez / Calle Comercio Facility.

157. Defendant failed to provide any monthly monitoring records from its automatic tank gauging system, or any other method of release detection, for the two USTs at the Mayaguez / Calle Comercio Facility.

158. Defendant was in violation of Rules 305(B)(4) & (C) and 406 of PRUSTR with respect to two USTs at the Mayaguez / Calle Comercio Facility from January 20, 2010, to January 20, 2011.

159. Pursuant to 40 C.F.R. §§ 280.34 and 280.45, Defendant is required to maintain records demonstrating recent compliance with release detection requirements for at least one year, and must keep the records at the facility or provide the records for inspection upon request.

160. In IRL#3, EPA requested that Defendant indicate the method of release detection used at the St. Thomas / Anna's Retreat, St. Thomas / Altona, St. Thomas / Amalie and St. Thomas / Smith Bay Facilities, and provide the monthly release detection monitoring reports for the twelve months prior to May 2012.

161. Defendant failed to provide monthly monitoring records from its automatic tank gauging system, or any other method of release detection, for the three USTs at the St. Thomas / Anna's Retreat Facility from May 2011 to October 2011, and for two of the three USTs at this Facility for the month of February 2011.

162. Defendant was in violation of 40 C.F.R. §§ 280.34 and 280.45 with respect to three USTs at the St. Thomas / Anna's Retreat Facility from May 2011 to October 2011, and for two of the three USTs at this Facility for the month of February 2011.

163. Defendant failed to provide monthly monitoring records from its automatic tank gauging system, or any other method of release detection, for the two USTs at the St. Thomas / Altona Facility from May 2011 to December 2011.

164. Defendant was in violation of 40 C.F.R. §§ 280.34 and 280.45 with respect to two USTs at the St. Thomas / Altona Facility from May 2011 to December 2011.

165. Defendant failed to provide monthly monitoring records from its automatic tank gauging system, or any other method of release detection, for the two USTs at the St. Thomas / Amalie Facility from May 2011 to September 2011.

166. Defendant was in violation of 40 C.F.R. §§ 280.34 and 280.45 with respect to two USTs at the St. Thomas / Amalie Facility from May 2011 to September 2011.

167. Defendant failed to provide monthly monitoring records from its automatic tank gauging system, or any other method of release detection, for the two USTs at the St. Thomas / Smith Bay Facility for eight of the twelve months requested prior to May 2012.

168. Defendant was in violation of 40 C.F.R. §§ 280.34 and 280.45 with respect to two USTs at the St. Thomas / Smith Bay Facility for the months of May 2011, July 2011 to November 2011, February 2012, and April 2012.

169. For its violations of Rules 305(B)(4), 305(C), and 406 of PRUSTR, and 40 C.F.R. §§ 280.34 and 280.45, Defendant is subject to injunctive relief and civil penalties at the daily rate set out in Paragraph 58.

SEVENTH CLAIM FOR RELIEF

Failure to Maintain and Provide Records of Annual Tests of ALLD Equipment PRUSTR Rules 305 and 406

170. Paragraphs 1 through 169 are realleged and incorporated by reference, as if fully set forth herein.

171. Pursuant to Rule 402(B)(1)(a) of PRUSTR, Defendant is required to provide an automatic line leak detector on all pressurized piping at the UST systems it owns.

172. Pursuant to Rule 405(A) of PRUSTR, Defendant is required to test the automatic line leak detectors annually.

173. Pursuant to Rules 305(B)(4), 305(C) and 406 of PRUSTR, Defendant is required to maintain records demonstrating recent compliance with release detection requirements, including the requirement that automatic line leak detectors be tested annually, and must retain test results from ALLD testing for at least one year at the facility or must provide the records for inspection upon request.

174. In IRL #1, EPA requested that Defendant provide records of annual ALLD testing at the relevant facilities for the years 2009 and 2010.

175. Defendant failed to provide ALLD test results for the pressurized piping associated with the premium gasoline UST at the San Juan / Ave. Pineros Facility for the year prior to Total's receipt of IRL #1, January 20, 2010, to January 20, 2011.

176. Defendant did provide a record of a test attempted on January 11, 2010, but the tank contained insufficient premium gasoline for the test to proceed.

177. Defendant was in violation of Rule 305(B)(4) and (C) and Rule 406 from January 20, 2010, to January 20, 2011, with respect to ALLD test records for one UST at the San Juan / Ave. Pineros Facility.

178. Defendant failed to provide ALLD test results for the pressurized piping associated with two USTs at the San Juan / Ave. Rexach Facility for the year prior to Total's receipt of IRL #1, January 20, 2010, to January 20, 2011.

179. Defendant was in violation of Rule 305(B)(4) and (C) and Rule 406 from January 20, 2010, to January 20, 2011, with respect to ALLD test records for two USTs at the San Juan / Ave. Rexach Facility.

180. Defendant failed to provide ALLD test results for the pressurized piping associated with all four USTs at the Ponce / Ave. Las Americas Facility for the period between November 3, 2009, and January 20, 2011.

181. Defendant was in violation of Rule 305(B)(4) and (C) and Rule 406 from November 3, 2010, to January 20, 2011, with respect to ALLD test records for four USTs at the Ponce / Ave. Las Americas Facility.

182. Defendant failed to provide ALLD test results for the pressurized piping associated with all three USTs at the San German / Carr. 2 Facility for the period between September 23, 2009, and January 20, 2011.

183. Defendant was in violation of Rule 305(B)(4) and (C) and Rule 406 from September 23, 2010, to January 20, 2011, with respect to ALLD test records for three USTs at the San German / Carr. 2 Facility.

184. Defendant failed to provide ALLD test results for the pressurized piping associated with the premium gasoline and diesel USTs at the Moca Facility for the year prior to Total's receipt of IRL #1, January 20, 2010, to January 20, 2011.

185. Defendant provided documents indicating that an automatic tank gauging system was installed at the Moca Facility that was able to automatically test the pressurized piping on November 22, 2010.

186. Defendant was in violation of Rule 305(B)(4) and (C) and Rule 406 from January 20, 2010, to November 21, 2010, with respect to ALLD test records for two USTs at the Moca Facility.

187. Defendant failed to provide ALLD test results for the pressurized piping associated with both USTs at the Aguadilla / Carr. 459 Facility for the year prior to Total's receipt of IRL #1, January 20, 2010, to January 20, 2011.

188. Defendant was in violation of Rule 305(B)(4) and (C) and Rule 406 from January 20, 2010, to January 20, 2011, with respect to ALLD test records for two USTs at the Aguadilla / Carr. 459 Facility.

189. Defendant failed to provide ALLD test results for the pressurized piping associated with both USTs at the Cabo Rojo Facility for the period between September 23, 2009, and January 20, 2011.

190. Defendant was in violation of Rule 305(B)(4) and (C) and Rule 406 from September 23, 2010, to January 20, 2011, with respect to ALLD test records for both USTs at the Cabo Rojo Facility.

191. Defendant failed to provide ALLD test results for the pressurized piping associated with all three USTS at the Isabela Facility for the period between December 11, 2009, and January 20, 2011.

192. Defendant was in violation of Rule 305(B)(4) and (C) and Rule 406 from December 11, 2010, to January 20, 2011, with respect to ALLD test records for three USTs at the Isabela Facility.

193. Defendant failed to provide ALLD test results for the pressurized piping associated with both USTs at the Sabana Grande / Carr. 102 Facility for the period between September 25, 2009, and January 20, 2011.

194. Defendant was in violation of Rule 305(B)(4) and (C) and Rule 406 from September 25, 2010, to January 20, 2011, with respect to ALLD test records for two USTs at the Sabana Grande / Carr. 102 Facility.

195. Defendant failed to provide ALLD test results for the pressurized piping associated with all three USTs at the Ponce / Carr. 2, Km 2.5 Facility for the period between November 5, 2009, and January 20, 2011.

196. Defendant was in violation of Rule 305(B)(4) and (C) and Rule 406 from November 5, 2010, to January 20, 2011, with respect to ALLD test records for three USTs at the Ponce / Carr. 2, Km 2.5 Facility.

197. Defendant failed to provide ALLD test results for the pressurized piping associated with both USTs at the Adjuntas Facility for the period between December 9, 2009, and January 20, 2011.

198. Defendant was in violation of Rule 305(B)(4) and (C) and Rule 406 from December 9, 2010, to January 20, 2011, with respect to ALLD test records for two USTs at the Adjuntas Facility.

199. Defendant failed to provide ALLD test results for the pressurized piping associated with three USTs at the Yauco / Carr. 128 Facility for the period between September 25, 2009, and January 20, 2011.

200. Defendant was in violation of Rule 305(B)(4) and (C) and Rule 406 from September 25, 2010, to January 20, 2011, with respect to ALLD test records for three USTs at the Yauco / Carr. 128 Facility.

201. For its violations of Rules 305(B)(4) & (C) and 406, Defendant is subject to injunctive relief and civil penalties at the daily rate set out in Paragraph 58.

EIGHTH CLAIM FOR RELIEF

Failure to Operate and Maintain Corrosion Protection Equipment PRUSTR Rule 302

202. Paragraphs 1 through 201 are realleged and incorporated by reference, as if fully set forth herein.

203. Pursuant to Rule 302 of PRUSTR, for all steel tanks with corrosion protection systems, Defendant is required to operate and maintain the corrosion protection system to continuously provide corrosion protection.

204. In IRL #1, EPA requested that Defendant provide records indicating that it operated and maintained the corrosion protection systems to continuously provide corrosion protection at the Aguadilla / Carr. 459 and San Juan / Ave. Rexach Facilities.

205. In response to IRL #1, Defendant provided annual test reports of its corrosion protection system at Aguadilla / Carr. 459 showing that the system was not functioning properly on December 17, 2009, or December 15, 2010.

206. Defendant did not provide any report indicating that the corrosion protection system at Aguadilla / Carr. 459 is now functioning properly.

207. Defendant was in violation of Rule 302 from December 17, 2009, continuing at least through December 15, 2010, with respect to two USTs at the Aguadilla / Carr. 459 Facility.

208. In response to IRL #1, Defendant provided a report showing that its corrosion protection system at San Juan / Ave. Rexach was not functioning properly on December 9, 2009.

209. Defendant did not provide any report showing that the corrosion protection system was fixed prior to its replacement of the steel USTs at the San Juan / Ave. Rexach Facility with fiberglass USTs on January 13, 2010.

210. Defendant was in violation of Rule 302 from December 9, 2009 to January 12, 2010, with respect to three USTs at the San Juan / Ave. Rexach Facility.

211. For its violations of Rule 302, Defendant is subject to injunctive relief and civil penalties at the daily rate set out in Paragraph 58.

NINTH CLAIM FOR RELIEF

Failure to Provide Overfill Protection Equipment PRUSTR Rule 201(C)(1)(b)

212. Paragraphs 1 through 211 are realleged and incorporated by reference, as if fully set forth herein.

213. Defendant must provide on all UST systems relevant to this Complaint, a method of overfill protection meeting the criteria in Rule 201(C)(1)(b), unless certain exceptions listed in Rule 201(C)(2) apply; those exceptions are not relevant to the claims in this Complaint.

214. A ball float is a method of overfill protection that alerts the operator that the tank is nearly full by restricting the flow into the tank, but not completely shutting off the flow.

215. For overfill protection equipment that restricts the flow into the tank rather than shutting off the flow, the equipment must be set to restrict the flow when the tank is no more than 90% full. PRUSTR Rule 201(C)(1)(b)(ii).

216. During an inspection of Defendant's San German / Carr. 2 Facility on September 10, 2008, the inspector observed that the ball floats were set at more than 90% for two tanks, and that the ball float was missing from the third tank.

217. In response to IRL #1, Defendant provided a maintenance report establishing that the ball floats at the San German / Carr. 2 Facility were repaired on November 25, 2009.

218. Defendant was in violation of Rule 201(C)(1)(b) from September 10, 2008, to November 24, 2009, with respect to three USTs at its San German / Carr. 2 Facility.

219. During an inspection of defendant's Maricao Facility on September 10, 2008, the inspector observed that the ball floats were set at more than 90% for two tanks.

220. In response to IRL #1, Defendant provided a maintenance report establishing that the ball floats at the Maricao Facility were repaired on November 18, 2009.

221. Defendant was in violation of Rule 201(C)(1)(b) from September 10, 2008, to November 17, 2009, with respect to two USTs at its Maricao Facility.

222. During an inspection of defendant's Cabo Rojo Facility on September 10, 2008, the inspector observed that the ball floats were set at more than 90% for two tanks.

223. In response to IRL #1, Defendant provided a maintenance report establishing that the ball floats at the Cabo Rojo Facility were repaired on November 19, 2009.

224. Defendant was in violation of Rule 201(C)(1)(b) from September 10, 2008, to November 18, 2009, with respect to two USTs at its Cabo Rojo Facility.

225. During an inspection of defendant's Mayaguez / Carr. 2 Facility on September 22, 2009, the inspector noted that the method of overfill protection was an overfill alarm, but that the alarm had been vandalized and was broken.

226. In response to IRL #1, Defendant asserted that the alarm at the Mayaguez / Carr. 2 Facility was repaired “around November or December 2010” but did not provide documentation to support these dates.

227. Defendant was in violation of Rule 201(C)(1)(b) from September 22, 2009, to at least November 1, 2010, with respect to two USTs at the Mayaguez / Carr. 2 Facility.

228. For its violations of Rule 201(C)(1)(b), Defendant is subject to injunctive relief and civil penalties at the daily rate set out in Paragraph 58.

TENTH CLAIM FOR RELIEF

Failure to Secure USTs in Temporary Closure PRUSTR Rule 701(B)

229. Paragraphs 1 through 228 are realleged and incorporated by reference, as if fully set forth herein.

230. Pursuant to PRUSTR Rule 701(B), Defendant must secure lines, pumps, manways, and ancillary equipment when its stations are in temporary closure of more than three months.

231. The following facilities were in temporary closure during the time periods relevant to this tenth claim, because they were closed for business, but their tanks had not been removed or filled with an inert substance as required for permanent closure by PRUSTR Rule 702: Lajas; Ponce / Carr. 2, Km 22.3; Naranjito; San German / Calle Luna; Mayaguez / Calle Comercio; and Florida.

232. During an inspection of Defendant’s Lajas Facility on September 10, 2009, the inspector noted that the station was closed, but two dispensers were not secured.

233. In response to IRL #1, Defendant noted that the Lajas Facility was still closed but failed to provide any documentation that the unsecured dispensers had been secured, and failed to provide any documentation that the USTs had been permanently closed.

234. Defendant was in violation of Rule 701(B) from September 10, 2009, through at least November 3, 2011, with respect to the Lajas Facility.

235. During an inspection of Defendant's Ponce / Carr. 2, Km 22.3 Facility on September 11, 2009, the inspector noted that the station was closed, but two dispensers and the fill port cap for one UST were not secured.

236. In its supplemental response to IRL #1, Defendant noted that the Ponce / Carr. 2, Km 22.3 Facility was still closed and provided undated photos showing that the fill port cap that was not secured at the time of the inspection had been locked, but not showing that the dispensers had been secured.

237. Defendant was in violation of Rule 701(B) from September 11, 2009, through at least November 3, 2011, with respect to its Ponce / Carr. 2, Km 22.3 Facility.

238. During an inspection of Defendant's Naranjito Facility on September 11, 2008, the inspector noted that the station was closed, but fill port caps for the two USTs at that station were not secured.

239. In its supplemental response to IRL #1, Defendant noted that the Naranjito Facility was still closed and provided undated photos showing that the fill port caps that were not secured at the time of the inspection had been locked.

240. Defendant was in violation of Rule 701(B) from September 11, 2008, through May 22, 2011, with respect to its Naranjito Facility.

241. During an inspection of Defendant's San German / Calle Luna Facility on September 10, 2009, the inspector noted that the station was closed, but two dispensers were not secured.

242. In its supplemental response to IRL #1, Defendant noted that the San German / Calle Luna Facility was still closed and provided undated photos showing that the UST fill port had been locked, but not showing that the dispensers had been secured.

243. Defendant was in violation of Rule 701(B) from September 10, 2009, through at least November 3, 2011, with respect to its San German / Calle Luna Facility.

244. During an inspection of Defendant's Mayaguez / Calle Comercio Facility on September 22, 2009, the inspector noted that the station was closed, but the fill port cap for one UST was not secured and the two dispensers were not secured.

245. In response to IRL #1, Defendant noted that the Mayaguez / Calle Comercio Facility was still closed but did not provide any documentation establishing that the fill port or dispensers had been secured.

246. Defendant was in violation of Rule 701(B) from September 22, 2009, through at least November 3, 2011, with respect to its Mayaguez / Calle Comercio Facility.

247. During an inspection of Defendant's Florida Facility on September 25, 2009, the inspector noted that the station was closed, but the fill ports for the USTs and the dispensers were not secured.

248. In response to IRL #1, Defendant noted that it had sold the USTs at the Florida Facility on November 20, 2009, but did not provide any documentation establishing that the fill port or dispensers had been secured during its ownership.

249. Defendant was in violation of Rule 701(B) from September 25, 2009, through November 19, 2009, with respect to its Florida Facility.

250. For its violations of Rule 701(B), Defendant is subject to injunctive relief and civil penalties at the daily rate set out in Paragraph 58.

ELEVENTH CLAIM FOR RELIEF

Failure to Secure Vapor or Groundwater Monitoring Wells
PRUSTR Rule 404(E)(7) and 404(F)(8)

251. Paragraphs 1 through 250 are realleged and incorporated by reference, as if fully set forth herein.

252. Pursuant to Rules 404(E)(7) and 404(F)(8) of PRUSTR, Defendant is required to keep vapor and groundwater monitoring wells secured to avoid unauthorized access and tampering.

253. During an inspection of Defendant's Penuelas Facility on September 11, 2009, the inspector noted that one groundwater or vapor monitoring well was unsecured.

254. In its supplemental response to IRL #1, Defendant provided an undated photo establishing that the monitoring well at the Penuelas Facility had been locked.

255. Defendant was in violation of Rule 404(E)(7) or 404(F)(8) from September 11, 2009, to approximately May 22, 2011, with respect to its Penuelas Facility.

256. During an inspection of Defendant's Sabana Grande / Carr. 2 Facility on September 9, 2009, the inspector noted that one groundwater or vapor monitoring well was unsecured.

257. In its supplemental response to IRL #1, Defendant provided an undated photo establishing that the monitoring well at the Sabana Grande / Carr. 2 Facility had been locked.

258. Defendant was in violation of Rule 404(E)(7) or 404(F)(8) from September 9, 2009, to approximately May 22, 2011, with respect to one monitoring well at its Sabana Grande / Carr. 2 Facility.

259. During an inspection of Defendant's Ponce / Carr. 2, Km 22.3 Facility on September 11, 2009, the inspector noted that one groundwater or vapor monitoring well was unsecured.

260. In its supplemental response to IRL #1, Defendant provided an undated photo establishing that the monitoring well at the Ponce / Carr. 2, Km 22.3 Facility had been locked.

261. Defendant was in violation of Rule 404(E)(7) or 404(F)(8) from September 11, 2009, to approximately May 22, 2011, with respect to one monitoring well at its Ponce / Carr. 2, Km 22.3 Facility.

262. During inspections of Defendant's Aguadilla / Carr. 459 Facility on August 23, 2008, and September 21, 2009, inspectors noted that one groundwater or vapor monitoring well was unsecured.

263. In its supplemental response to IRL #1, Defendant provided an undated photo establishing that the monitoring well at the Aguadilla / Carr. 459 Facility had been locked.

264. Defendant was in violation of Rule 404(E)(7) or 404(F)(8) from August 23, 2008, to approximately May 22, 2011, with respect to one monitoring well at its Aguadilla / Carr. 459 Facility.

265. During an inspection of Defendant's Cabo Rojo Facility on September 10, 2009, the inspector noted that one groundwater or vapor monitoring well was unsecured.

266. Defendant has not provided any documentation establishing that the monitoring well at the Cabo Rojo Facility has been locked.

267. Defendant was in violation of Rule 404(E)(7) or 404(F)(8) from September 10, 2009, to at least November 3, 2011, with respect to one monitoring well its Cabo Rojo Facility.

268. During inspections of Defendant's Isabela Facility on August 23, 2008, and September 23, 2009, inspectors noted that two groundwater or vapor monitoring wells were unsecured.

269. Defendant has not provided any documentation establishing that the monitoring wells at the Isabela Facility have been locked.

270. Defendant was in violation of Rule 404(E)(7) or 404(F)(8) from August 23, 2008, to at least November 3, 2011, with respect to two monitoring wells at its Isabela Facility.

271. For its violations of Rules 404(E)(7) and / or 404(F)(8), Defendant is subject to injunctive relief and civil penalties at the daily rate set out in Paragraph 58.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully prays that this Court grant the following relief:

A. Enjoin the Defendant to come into compliance with all applicable requirements for subtitle I of RCRA, 42 U.S.C. § 6991 *et seq.*, and its implementing regulations;

B. With respect to each day of each violation at each facility, as set forth under each claim for relief in this Complaint, order Defendant to pay civil penalties, in the amount of up to \$11,000 per tank and/or associated piping per day for each violation occurring after March 15, 2004, and \$16,000 per tank and/or associated piping per day for each violation occurring after January 12, 2009.

C. Order Defendant, in the absence of compliance with the PRUSTR, to immediately cease operation of, and permanently close, in accordance with Rules 701 through 705 of PRUSTR, all UST systems at each facility set forth under each claim for relief in this complaint; and

D. Award the United States the costs of this action, and such further relief as this Court may deem appropriate.

Respectfully submitted,

Dated: March 9, 2015

THE UNITED STATES OF AMERICA

JOHN C. CRUDEN
Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice

By: 

RUBEN D. GOMEZ

Trial Attorney

(Gov. Atty. No. G00809)

Environment and Natural Resources Division

United States Department of Justice

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Of Counsel:

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US EPA Region II

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New York, NY 10007

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JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Ruben Gomez, Trial Attorney
USDOJ/ENRD/EES; P.O. Box 7611; Washington, DC 20044
(202) 514-4797

DEFENDANTS

Total Petroleum Puerto Rico Corp.

County of Residence of First Listed Defendant Guaynabo
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Edwin R. Cruz, Esq.
Pietrantonio, Mendez & Alvarez LLC; Banco Popular Center - 19th
Floor; 209 Munoz Rivera Ave; San Juan, PR 00918; (787) 274-5242

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. § 6991e, et seq. ("RCRA")

Brief description of cause:

Action under RCRA, regulations under 40 C.F.R. 280 and Puerto Rico Underground Storage Tank Regulations

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

03/09/2015

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

CATEGORY SHEET

You must accompany your complaint with this Category Sheet, and the Civil Cover Sheet (JS-44).

Attorney Name (Last, First, MI):

USDC-PR Bar Number:

Email Address:

1. Title (caption) of the Case (provide only the names of the first party on each side):

Plaintiff:

Defendant:

2. Indicate the category to which this case belongs:

☐ Ordinary Civil Case

☐ Social Security

☐ Banking

☐ Injunction

3. Indicate the title and number of related cases (if any).

4. Has a prior action between the same parties and based on the same claim ever been filed before this Court?

☐ Yes

☐ No

5. Is this case required to be heard and determined by a district court of three judges pursuant to 28 U.S.C. § 2284?

☐ Yes

☐ No

6. Does this case question the constitutionality of a state statute? (See, Fed.R.Civ. P. 24)

☐ Yes

☐ No

Date Submitted: